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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,645	02/06/2004	David Wilson Shaw	SMTT 330	7618
23581	7590	11/14/2006	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			PICO, ERIC E	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/773,645	SHAW, DAVID WILSON	
	Examiner	Art Unit	
	Eric Pico	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/05/2006 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim(s) 1-5, and 11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Habicht U.S. Patent No. 5489182 in view of Chandaria U.S. Patent No. D473377 and Miyakoshi et al. U.S. Patent No. 6543584.

4. **Regarding claim 1 and 11**, Habicht discloses a storage apparatus comprising a storage portion, referred to as container 48, a support structure 12 to support the storage portion 48, a carriage 108 connected to the storage portion 48 and movable with respect to the support structure 12 to move the storage portion 48 between a

Art Unit: 3654

loading position and a storage position; rails 26 below the storage portion 48 to receive and support articles to be stored; and an actuator mechanism 32 to control movement of the carriage 108.

5. Habicht is silent concerning the storage portion comprises a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls, and an upstanding front wall to define an interior region for holding article to be stored, the front wall of the container having a section that is lower than the end walls to define an opening for access to the interior region; and rails, wherein the rails are extendable from a stowed position below the storage portion to a position extended from the storage portion to receive and support articles to be stored, and in which the rails are configured to telescope between the stowed and extended positions.

6. Chandaria teaches a storage portion comprised of a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls, and an upstanding front wall to define an interior region for holding article to be stored, the front wall of the container having a section that is lower than the end walls to define an opening for access to the interior region.

7. Miyakoshi et al. teaches rails 20 below a storage portion, shown as the top of cage 4, wherein the rails 20 are extendable from a stowed position below the storage portion to a position extended from the storage portion to receive and support articles to be stored and in which the rails 20 are configured to telescope between the stowed and extended positions.

Art Unit: 3654

8. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the container disclosed by Habicht with upstanding walls taught by Chandaria to facilitate accessibility and removal of items on the storage portion.

9. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the storage portion disclosed by Habicht with rails, wherein the rails are extendable from a stowed position below the storage portion to a position extended from the storage portion as taught by Miyakoshi et al. to receive and support articles to be stored

10. **Regarding claim 2**, Habicht further discloses the support structure 12 includes at least one surface to guide movement of the carriage 108 between the loading and storage positions of the storage portion 48.

11. **Regarding claim 3**, Habicht further discloses the support structure 12 comprises a post 100 and a surface to guide movement of the carriage 108 comprises a side 116 of the post 100.

12. **Regarding claim 4**, Habicht further discloses the carriage 108 comprises a pair of spaced members 26 positionable on opposite sides of the post 100 to define a platform for supporting a storage portion 48 and rollers 110 rotatably mounted between the spaced members 26 to engage the side of the post 100 to permit slidable movement of the carriage 108 along the post 100.

13. **Regarding claim 5**, Habicht further discloses the post 100 is substantially vertical and the carriage 108 includes two rollers 110 on opposite sides of the post 100 to engage sides of the post 100.

Art Unit: 3654

14. Claim(s) 1-7 and 11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermette et al. U.S. Patent No. 4421209 in view of Chandaria U.S. Patent No. D473377 and Miyakoshi et al. U.S. Patent No. 6543584.

15. **Regarding claim 1 and 11**, Vermette et al. discloses a storage apparatus comprising a storage portion, created by fork lift table 58, a support structure, referred to as upright post 12, to support the storage portion, a carriage, not numbered but shown in Figures 1-5, connected to the storage portion and movable with respect to the support structure 12 to move the storage portion between a loading position and a storage position, and an actuator mechanism, referred to as winch device 46, to control movement of the carriage.

16. Vermette et al. is silent concerning the storage portion comprises a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls, and an upstanding front wall to define an interior region for holding article to be stored, the front wall of the container having a section that is lower than the end walls to define an opening for access to the interior region; and rails, wherein the rails are extendable from a stowed position below the storage portion to a position extended from the storage portion to receive and support articles to be stored, and in which the rails are configured to telescope between the stowed and extended positions.

17. Chandaria teaches a storage portion comprised of a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls, and an upstanding front wall to define an interior region for holding article to be stored, the front wall of the

Art Unit: 3654

container having a section that is lower than the end walls to define an opening for access to the interior region.

18. Miyakoshi et al. teaches rails 20 below a storage portion, shown as the top of cage 4, wherein the rails 20 are extendable from a stowed position below the storage portion to a position extended from the storage portion to receive and support articles to be stored and in which the rails 20 are configured to telescope between the stowed and extended positions.

19. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the storage portion disclosed by Vermette et al. a box structure container taught by Chandaria to facilitate accessibility removal of items on the storage portion.

20. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the storage portion disclosed by Habicht with rails, wherein the rails are extendable from a stowed position below the storage portion to a position extended from the storage portion as taught by Miyakoshi et al. to receive and support articles to be stored

21. **Regarding claim 2**, Vermette et al. further discloses the support structure includes surfaces to guide movement of the carriage between the loading and storage positions of the storage portion.

22. **Regarding claim 3**, Vermette et al. further discloses the support structure comprises a post 12 and the surface to guide movement of the carriage comprises a side of the post 12.

Art Unit: 3654

23. **Regarding claim 4**, Vermette et al. further discloses the carriage comprises a pair of spaced members 54, 56 positionable on opposite sides of the post 12 to define a platform for supporting the storage portion, rollers 74, 76 rotatably mounted between the spaced members 54, 56 to engage the side of the post 12 to permit slidable movement of the carriage along the post 12.

24. **Regarding claim 5**, Vermette et al. further discloses the post 12 is substantially vertical and the carriage includes two rollers 74, 76 on opposite sides of the post 12 to engage sides of the post 12.

25. **Regarding claim 6**, Vermette et al. further discloses rollers 74, 76 are vertically offset from each other.

26. **Regarding claim 7**, Vermette et al. further discloses the offset rollers 74, 76 are supported by a pair of plates 54, 56 on opposing sides of the post 12, the pair of plates 54, 56 supporting a beam, referred to as fork lift table 58, extending from the plates 54, 56 in a cantilever configuration to define the platform 58 to support the storage portion whereby the storage portion exerts a force on the plates 54, 56 that tends to bias the offset rollers 74, 76 into engagement with the sides of the post 12.

27. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vermette et al. U.S. Patent No. 4421209 in view of Chandaria U.S. Patent No. D473377 and Miyakoshi et al. U.S. Patent No. 6543584 as applied to claim 1 above, and further in view of Wilke et al. U.S. Patent No. 5368130.

Art Unit: 3654

28. **Regarding claim 12**, Vermette et al. discloses the actuator mechanism 46 comprises a hoist mounted to the support structure 12 and connected to the carriage to move the carriage with respect to the support structure 12.

29. Vermette et al. is silent concerning the actuator mechanism comprising a chain hoist.

30. Wilke et al. teaches an actuator mechanism comprising a chain hoist.

31. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the actuator mechanism disclosed by Vermette et al. with a chain hoist disclosed by Wilke et al. to facilitate the strength of the hoist.

Response to Arguments

32. Applicant's arguments filed 09/05/2006 have been fully considered but they are not persuasive.

33. In response to applicant's argument that Chandaria U.S. Patent No. D473377 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Chandaria is in the field of storage devices. A storage portions comprising a box structure having a base, an upstanding rear wall, a pair of upstanding, opposed end walls, and an upstanding front wall to define an interior region for holding article to be stores, the front wall having a section that is lower than the end

Art Unit: 3654

walls to define an opening for access to the interior region is notoriously old and well known in the art of storage devices. Further examples of storage portions with claimed structure are Hardy U.S. Patent No. D524542, Bentley et al. U.S. Patent No. D519735, Uihlein et al. U.S. Patent No. D506870, Chandaria U.S. Patent No. D479045, Ireland U.S. Patent No. D304638, Taylor U.S. Patent No. D275918, Pfaff U.S. Patent No. D272288, Valentine U.S. Patent No. D237020

34. In response to applicant's argument that there is nothing in the prior art to suggest combining Habicht U.S. Patent No. 5489182 in view of Chandaria U.S. Patent No. D473377. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Firstly, it should be noted that there is no requirement that an express, written suggestion to combine must appear in prior art references before a finding of obviousness. In addition to the teachings of the references themselves, the suggestion to combine references may be found in the nature of the problem to be solved or the knowledge of persons of ordinary skill in the art. Furthermore, while there must be a motivation to make the claimed invention, there is no requirement that the prior art provide the same reason as the applicant to make the claimed invention. In this case, the suggestion to combine Habicht in view of Chandaria comes from the knowledge of persons of ordinary skill in the art would provide a box structure to a storage portion to

Art Unit: 3654

easily access the storage portion as well as prevent items from being removed from the storage portion.

35. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hardy U.S. Patent No. D524542, Bentley et al. U.S. Patent No. D519735, Uihlein et al. U.S. Patent No. D506870, Chandaria U.S. Patent No. D479045, Ireland U.S. Patent No. D304638, Taylor U.S. Patent No. D275918, Pfaff U.S. Patent No. D272288, Valentine U.S. Patent No. D237020.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Pico whose telephone number is 571-272-5589. The examiner can normally be reached on 6:30AM - 3:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki can be reached on 571-272-6951. The fax phone

Art Unit: 3654

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EEP



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